

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

CHESAPEAKE EXPRESS, INC.	:	
	:	
v.	:	Civil Action WMN-02-1252
	:	
OFFICE DEPOT, INC., <u>et al.</u>	:	

**MEMORANDUM**

Before the Court is Plaintiff's motion to remand this action to the Circuit Court for Baltimore County. Paper No. 13. The motion is fully briefed. Upon a review of the pleadings and the applicable case law, the Court determines that no hearing is necessary (Local Rule 105.6) and that Plaintiff's motion should be granted.

This action arises out of a contract dispute. Plaintiff, Chesapeake Express, Inc., a trucking company with its principal office in Baltimore County, Maryland, had provided delivery services to Defendant, Office Depot, a Delaware corporation with its principal place of business in Florida, beginning in 1999. Plaintiff and Office Depot entered into a written contract in December, 1999 that specified the pricing and other terms for the work. In the spring of 2000, Office Depot began using Plaintiff for some standard delivery routes in Maryland, Washington, D.C., and northern Virginia. According to the Complaint, in 2001, Office Depot and Plaintiff entered into a three year, noncancelable agreement for Plaintiff to provide delivery services in Northern New Jersey, New York, Louisville, and

Nashville. Plaintiff alleges that Office Depot failed to honor the three-year contract.

Additionally, Plaintiff alleges that Defendant Leslie Jenkins, a citizen and resident of Maryland and the Office Depot Regional Transportation Director for Northeastern United States, "intentionally, willfully, improperly, and maliciously interfered with the employment contracts between Chesapeake Express and its employees and with the employment and economic relationships between Chesapeake Express and its employees." Complaint at ¶ 80. Specifically, Plaintiff alleges that Defendant Jenkins "trespassed upon Chesapeake Express's Virginia terminals, and by falsely denigrating Chesapeake Express, caused the Chesapeake Express employees to be willing to leave Chesapeake Express as soon as Jenkins and Office Depot could provide other employment."<sup>1</sup> Pl.'s Mot. at 2. On November 20, 2001, Defendant Office Depot terminated its written delivery contract with Plaintiff. On November 26, 2001, Plaintiff discovered that thirteen of its employees, including truck drivers and a senior manager, had quit and "had defected to High Tech Systems." Pl.'s

---

<sup>1</sup> Plaintiff claims that Defendant Jenkins, on two occasions, entered its terminals and made false statements about Plaintiff-- "that Chesapeake Express was poorly operated and managed, that Chesapeake Express was not timely making deliveries of Office Depot's merchandise, and . . . that they were sure to lose their jobs." Pl.'s Mot. at 8. Additionally, Plaintiff alleges that Jenkins told Plaintiff's employees that "she could secure employment for them at High Tech Systems when High Tech Systems began to perform deliveries in Virginia [for Office Depot]." Id.

Mot. at 9-10. Plaintiff brought this action alleging breach of contract (Count I), fraud (Count II), negligent misrepresentation (Count III), and tortious interference with Chesapeake Express's economic relationships with its employees (Count IV).

Defendants removed this action to this Court on the basis of diversity jurisdiction. At the time that the complaint was filed, Plaintiff was a citizen of the State of Maryland, Defendant Office Depot was a Delaware corporation with its principal place of business in Florida, and Defendant Leslie Jenkins was a citizen of Maryland. While Defendants acknowledge that Defendant Jenkins would be considered a citizen of the State of Maryland, and this, ordinarily would destroy complete diversity, they contend that Jenkins was "fraudulently joined" in the complaint and should be ignored for the purposes of determining diversity jurisdiction. Plaintiff has moved to remand the case back to state court, arguing that Defendant Jenkins was a proper defendant.

To show fraudulent joinder, the removing party must demonstrate either "outright fraud in the plaintiff's pleading of jurisdictional facts" or that "there is no possibility that the plaintiff would be able to establish a cause of action against the in-state defendant in state court." Marshall v. Manville Sales Corp., 6 F.3d 229, 232 (4<sup>th</sup> Cir. 1993) (emphasis in original). As there is no allegation that Plaintiff has

fraudulently identified the residency of Defendant Jenkins, the only question before the Court is whether Plaintiff can establish a cause of action against Defendant Jenkins.

The Fourth Circuit has stressed that the party alleging fraudulent joinder "bears a heavy burden--it must show that the plaintiff cannot establish a claim even after resolving all issues of law and fact in the plaintiff's favor. This standard is even more favorable to the plaintiff than the standard for ruling on a motion to dismiss under Fed. R. Civ. P. 12(b)(6)." Hartley v. CSX Transportation, Inc., 187 F.3d 422, 424 (4<sup>th</sup> Cir. 1999). Further, courts should "resolve all doubts about the propriety of removal in favor of retained state court jurisdiction." Id. at 425.

Plaintiff brought one claim against Defendant Jenkins: tortious interference with Chesapeake Express's economic relationships with its employees. Defendants argue "there is not reasonable basis in fact to believe that Chesapeake could maintain a tortious interference claim against Jenkins." Defs.' Opp. at 5. Defendants advance three arguments in support of their claim. First, Defendants argue that no existing, identifiable business relationship or expectancy remained between Plaintiff and its Virginia employees after Defendant Office Depot terminated the written contract. Id. Second, Defendants argue that Defendant Jenkins's visits to Plaintiff's facilities and

actions therein were not the cause of the employees leaving Plaintiff. Id. Finally, Defendants claim that "any harm Chesapeake suffered was merely incidental to the lawful termination of its written contract with Office Depot." Id. at 6.

A viable claim for interference with an at-will employment contract has four elements.<sup>2</sup> The elements are:

(1) the existence of a valid contractual relationship or business expectancy; (2) knowledge of the relationship or expectancy on the part of the interferor; (3) intentional interference inducing or causing a breach or termination of the relationship of expectancy; and (4) resultant damage to the party whose relationship or expectancy has been disrupted.

Cha, 553 S.E.2d at 515. In addition, the plaintiff must "allege and prove not only an intentional interference that caused the

---

<sup>2</sup> Plaintiff admits that it had an employment at-will relationship with its employees. It is well settled, both in Maryland and Virginia, that parties to at-will economic relationships possess legally cognizable and protectible interests, and that they are entitled to legal redress from those who use improper means to interfere with those relationships. See, e.g., Kramer v. Mayor and City Council, 124 Md.App. 616, 637 (Md. 1999); Cha v. Korean Presbyterian Church, 553 S.E.2d 511, 515 (Va. 2001).

Maryland choice of law rules apply the law of the state in which the tort occurred. See, e.g., Hauch v. Connor, 295 Md. 120, 123-24 (Md. 1983). The Complaint alleges that the primary events relevant to the tortious interference occurred in Virginia. Therefore, this Court will apply Virginia law, but in any event, Maryland law is no different from Virginia law on these issues. In Maryland, a claim for interference with an at-will employment relationship is regarded as a claim for interference with economic relations. Kramer, 124 Md.App. at 637-38. In Virginia, the tort is defined as interference with an "at-will employment contract." Cha, 553 S.E.2d at 515.

termination of the at-will contract, but also that the defendant employed improper methods.” Id. (quoting Perke v. Vector Resources Group, Ltd., 485 S.E.2d 140, 143 (Va. 1997)) (emphasis in original).

Defendants’ first argument, that once Plaintiff’s contract was terminated, it had no identifiable economic relationship with the drivers, relates to the first element of the tort. Defendants argue that Plaintiff’s contract with Defendant Office Depot was “the sole basis for the drivers’ economic relationship” with Plaintiff. Defs.’ Joint Mot. to Dismiss at 22 (incorporated into Defs.’ Opposition Brief at 5). Plaintiff, however, claims that in Virginia, it had a roster of customers in addition to Defendant Office Depot. Pl.’s Mot. at 11. Plaintiff alleges that it had made a substantial investment in its Virginia operations, and that because Plaintiff lost so many from its workforce after the contract termination, it “lost the ability to service existing customers in Virginia, as well as the ability to continue to operate in those locations.” Id. at 10. The Court finds that Plaintiff has alleged facts that suggest that an economic relationship existed between Plaintiff and the drivers independent of the contract between Plaintiff and Defendant Office Depot.

Defendants’ second argument, that Defendant Jenkins’s actions were not the cause of the drivers leaving, relates to the

third element of the tort. Defendants claim that the drivers left Plaintiff because Office Depot terminated Plaintiff's delivery contract. Defs.' Joint Mot. to Dismiss at 25 (incorporated into Defs.' Opposition Brief at 5-6). The tort requires proximate cause. To satisfy proximate cause, a defendant's wrongdoing need not be the sole cause of the plaintiff's injury; it is sufficient that the defendant's conduct was a substantial factor in the plaintiff's loss. See, Commerce Funding Corp. v. Worldwide Security Services Corp., 249 F.3d 204, 213 (4<sup>th</sup> Cir. 2001) (holding that the plaintiff met its burden of establishing proximate cause by showing that defendant's action was, "at the very least, a substantial factor" in the plaintiff's loss of certain contracts). In this case, Plaintiff claims that Defendant Jenkins told Plaintiff's drivers that she would "see to it" that they "would be hired by High Tech Systems when it took over Chesapeake Express's delivery routes." Complaint at ¶ 48. Plaintiff alleges that Jenkins frightened the drivers and made them amenable to accept employment with High Tech Systems by making false statements about Plaintiff. After resolving all issues of law and fact in Plaintiff's favor, this Court finds that there is reasonable basis in fact to believe that Defendant Jenkins was a substantial factor in Plaintiff's loss of its drivers.

Finally, Defendants argue that "any harm Chesapeake suffered

was merely incidental to the lawful termination of its written contract with Office Depot." Defs.' Opp. at 6. It is settled law that "incidental effects . . . flowing from a legitimate business decision cannot constitute intentional interference." Derthick v. Bassett-Walker, Inc., 904 F.Supp. 510, 523 (W.D. Va. 1995), aff'd, 106 F.3d 390 (4<sup>th</sup> Cir. 1997) (unpublished). In this tortious interference claim, it appears that Plaintiff is suing Defendants for the acts that Defendant Jenkins allegedly committed when she entered Plaintiff's terminals, not for losses that resulted from Office Depot's termination of Plaintiff's delivery contract. Plaintiff alleges that Defendant Jenkins committed acts designed to injure the relationship between Plaintiff and its drivers--acts independent of Defendant Office Depot's later termination of the contract. See, Fairfield Six/Hidden Valley P'ship v. Resolution Trust Corp., 860 F.Supp. 1085, 1090-91 (D. Md. 1994) (finding that the acts constituting the gravamen of the alleged tortious interference were independent of any accompanying breach of contract that occurred).

The Court concludes that Defendants have not satisfied their burden to show fraudulent joinder. Plaintiff's Motion for Remand of Removed Action will be granted, and this case shall be remanded to the Circuit Court for Baltimore County. A separate order consistent with this memorandum will issue.



---

William M. Nickerson  
Senior United States District Judge

Dated: October           , 2002

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND

CHESAPEAKE EXPRESS, INC.                   :  
   :  
v.    : Civil Action WMN-02-1252  
   :  
OFFICE DEPOT, INC., et al.                :

**ORDER**

Pursuant to the foregoing memorandum, and for the reasons  
stated therein, IT IS this           day of October, 2002, by the  
United States District Court for the District of Maryland, hereby  
ORDERED:

1. That Plaintiff's Motion for Remand of Removed Action  
(Paper No. 13) is hereby GRANTED;
2. That the Clerk of the Court shall remand this action to

the Circuit Court for Baltimore County; and

3. That the Clerk of the Court shall mail or transmit copies of the foregoing memorandum and this order to all counsel of record.

---

William M. Nickerson  
Senior United States District Judge